

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ELIZABETH ELLIS,)	CASE NO.
)	
Plaintiff,)	JUDGE
)	
v.)	<u>NOTICE OF REMOVAL ACTION</u>
)	<u>UNDER 28 U.S.C. § 1441</u>
STEAK N SHAKE, INC., et al.)	
)	
Defendants.)	

TO THE CLERK OF COURT:

PLEASE TAKE NOTICE that Defendant Steak n Shake, Inc. (hereinafter referred to as “Defendant”) hereby moves to this Court, pursuant to 28 U.S.C. § 1441(a), the state court action described below:

1. On or about December 29, 2020, Elizabeth Ellis, Executrix for the Estate of John Mitchell Warrell (“Plaintiff”) filed a Complaint initiating suit in the Court of Common Pleas, Summit County, Ohio, against Defendant, captioned *Elizabeth Ellis v. Steak n Shake, et al.*, Case No. CV-2020-12-3644 (a copy of the Complaint is attached hereto as **Exhibit A**).

2. The Complaint was served on Steak n Shake, Inc. on January 21, 2021.

3. As explained below, there is complete diversity of citizenship between Plaintiff and Steak n Shake, Inc. to this action, and the amount in controversy in this action exceeds the \$75,000.00 jurisdictional minimum.

I. THIS REMOVAL NOTICE IS TIMELY.

4. The docket in Summit County reflects that Defendant was served with the

Complaint on January 21, 2021 (a copy of the Summit County docket is attached hereto as **Exhibit B**).

5. Pursuant to 28 U.S.C. § 1446(b), “[the] notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendants, through service or otherwise, of a copy of the initial pleading.”

6. As this Notice is being filed on February 17, 2021, Defendant’s Notice of Removal is timely.

II. DIVERSITY JURISDICTION LIES OVER THIS ACTION.

7. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(a).

8. Plaintiffs have alleged in the Complaint that they are residents of the State of Ohio.

9. Defendant Steak n Shake, Inc. is a corporation organized under the laws of the State of Indiana with its principal place of business in Indianapolis, IN.

10. The allegations contained in Plaintiff’s Complaint, coupled with the available facts surrounding Plaintiff’s claims, demonstrate that the amount in controversy exceeds \$75,000.00, inclusive of interest and costs.

11. Plaintiff’s Complaint is for personal injuries allegedly suffered.

12. Plaintiff’s claim that, as a result of the incident, the sustained damages are believed to be an amount in excess of \$25,000.00.

13. Therefore, as there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, this Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332(a).

III. THE OTHER REMOVAL PREREQUISITES HAVE BEEN SATISFIED.

14. Defendant has sought no similar relief with respect to this matter.

15. Written notice of the filing of this Notice of Removal will be given to all adverse parties as required by 28 U.S.C. §1446(b).

16. As required by 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendant in the state court proceeding - consists of the Complaint filed herewith as **Exhibit A**.

17. The allegations of this Notice are true and correct and this cause is within the jurisdiction of the United States District Court for the Northern District of Ohio, Eastern Division.

WHEREFORE, Defendant respectfully requests that this action be transferred to the United States District Court for the Northern District of Ohio, Eastern Division, and pray that this Court assume full and complete jurisdiction over this matter.

Respectfully submitted,

/s/ Tracey S. McGurk

TRACEY S. MCGURK (0069631)

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*Counsel for Defendant
Steak n Shake, Inc.*

CERTIFICATE OF SERVICE

This is to certify that the *Notice of Removal Action Under 28 U.S.C. §1441* has been filed electronically with the Court this 17th day of February 2021. Notice of the following will be sent to all counsel through the Court's electronic filing system. The parties can access this document through the Court's system.

A copy of the foregoing was also emailed this 17th day of February 2021 to the following:

Robert C. Meeker
Blakemore, Meeker & Bowler Co., L.P.A.
495 Portage Lakes Drive
Akron, OH 44319
rcmeeker@bmblaw.com

Counsel for Plaintiff

/s/ Tracey S. McGurk
TRACEY S. MCGURK (0069631)

Counsel for Defendant
Steak n Shake, Inc.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY
STATE OF OHIO

ELIZABETH ELLIS, Executrix for
the Estate of John Mitchell Warrell,
127 Eliot Street
Chestnut Hill, Massachusetts 02467,

Plaintiff,

-vs.-

STEAK N SHAKE, INC., dba
Steak 'N Shake, c/o Corporation Service
Company, its Statutory Agent
50 West Broad Street, Suite 1330
Columbus, Ohio 43215,

and

JOHN DOES 1-10, JANE DOES 1-10,
DOE PARTNERSHIPS 1-10, DOE
CORPORATIONS 1-10, DOE
GOVERNMENTAL AGENCIES 1-10 and
DOE ENTITIES 1-10,

Defendants.

Case No. _____

Judge: _____

COMPLAINT:

Negligence (Premises Liability)

JURY DEMAND ENDORSED HEREON

Now comes, ELIZABETH ELLIS, Executrix for the Estate of John Mitchell Warrell, Plaintiff herein, by and through her attorney, Robert C. Meeker, of Blakemore, Meeker & Bowler Co., L.P.A., and hereby complains against STEAK N SHAKE, INC., dba Steak 'N Shake, JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE GOVERNMENTAL AGENCIES 1-10 and DOE ENTITIES 1-10, names unknown, collectively as Defendants herein, as follows:

A. PARTIES

-1-



1. During all relevant times herein, Plaintiff ELIZABETH ELLIS ("Ellis") resides at 127 Eliot Street, Chestnut Hill, Massachusetts 02467.

2. On or about December 21, 2020, Plaintiff Ellis was appointed Administratrix for the Estate of John Mitchell Warrell (hereafter referred to as "Warrell"), who became deceased on or about August 19, 2020.

3. During all relevant times herein, Defendant STEAK N SHAKE, INC. ("Steak 'N Shake") was, and is, owning, maintaining, operating and doing business as Steak 'N Shake, a fast food restaurant, in Summit County, Ohio, located at 4000 Medina Road, Akron, Ohio 44333 ("Restaurant").

4. During all relevant times herein, Defendant Does were, and are, individuals, persons, corporations, partnerships, governmental agencies and entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff(s), or his/her/its/their attorney(s), and could not discover said names who in some manner may be liable to Plaintiff(s), contractually, vicariously, tortiously, jointly and/or severally, arising from the events described herein. Plaintiff(s) will be obtaining updated reports, as to identity, liability, existence of additional claims and/or causes of action or otherwise, in connection with or in addition to the claim or claims herein. Plaintiff(s) reserve(s) the right to plead Defendant Does as party defendant(s) and/or plead additional claim(s) to this action once their identities, capacities, activities, liabilities and claims or causes of action become known.

B. PRELIMINARY STATEMENT

5. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

6. During all relevant times herein, all transactions and occurrences occurred, in whole or in part, in Summit County, Ohio.

7. During all relevant times herein, Plaintiff Ellis' Decedent, Warrell, was a 92-year old individual, born on March 7, 1927.

8. On or about July 8, 2019, Plaintiff Ellis' Decedent, Warrell, was a customer at Defendant Steak 'N Shake's restaurant.

9. Warrell arrived at the restaurant in the afternoon, wearing shorts, a top and a pair of running shoes.

10. After entering, Warrell sat in a booth, close to the grill side of the restaurant.

11. Warrell then headed for the counter to place an order; after placing the order, Warrell turned around and decided to use the bathroom.

12. The bathroom was located on the other side of the restaurant from the counter, where Warrell placed his order.

13. In order to reach the bathroom, Warrell was required to walk down an aisle, between a row of booths on each side of the aisle, make a quick right turn, then a quick left turn, and head straight for the bathroom.

14. Warrell then proceeded toward the bathroom, walking on the right hand side of the aisle.

15. When he reached the end of the row of booths on the right hand side of the aisle, Warrell made a right turn; in doing so, his right foot caught the right foot of a child high chair, causing him to fall on his hands, knee and face.

16. As a result, Warrell suffered great bodily injuries, including fractures to both wrists

and injuries to his face and right knee and pain and suffering.

17. Warrell did not see or notice the presence of the chair, until he was falling to the floor.

18. The chair was hidden, placed behind the back of the last booth, located on the right hand side.

C. CAUSE(S) OF ACTION

Count One

[Negligence: Premises Liability]

19. Plaintiff(s) repeat(s) and re-aver(s) the allegations contained in the preceding paragraphs, as appropriate, as if fully set forth herein.

20. During all relevant times herein, as a customer, Warrell was a business invitee of Defendants, including Steak 'N Shake.

21. Defendant Steak 'N Shake owed a legal duty of ordinary care to maintain the premises safe for its business invitees, such as Warrell, and keep them safe from harm.

22. To perform its duty of ordinary case, Defendant Steak 'N Shake was required to maintain and operate an aisle or walkway free and clear of obstructions.

23. Further, to perform its duty of ordinary case, Defendant Steak 'N Shake was required to warn its invitees of dangers within its premises, about which invitees would not have notice or be aware.

24. Further, invitees, such as Warrell, would not expect that Steak 'N Shake's walkway would be obstructed, it that the chair was hidden from view, placed behind a booth, as Warrell walked down the aisle toward the bathroom.

25. As such, any object placed within the walkway would not be open and obvious to

invitees, who proceed through the walkway, and must make a quick right, then left, in order to reach the bathroom.

26. Steak 'N Shake knew, or should have known, that placing an object within the walkway under such conditions would created a dangerous condition to invitees.

27. Steak 'N Shake knew, or should have known, that placing the children's chair within the walkway, behind the booth, would, and, in this case, did, directly and proximately cause Warrell to sustain great bodily harm and pain and suffering.

28. As a result Warrell's injuries, Plaintiff suffered damages in excess of \$25,000.00, the true amount of which shall be proven in court.

WHEREFORE, Plaintiff prays for judgment against Defendants, including Steak 'N Shake, as follows:

1. That, as to Count One, the Court grants in favor of Plaintiff against Defendants, in excess of \$25,000.00, as to each Defendant;

2. That the Court grants damages and relief in favor of Plaintiff against Defendants, jointly and severally, for Plaintiff's costs and expenses incurred, including, but not limited to, court costs, reasonable attorney fees, interest and other losses; and

3. That the Court grants further relief and damages in favor of Plaintiff against Defendants, jointly and severally, as the Court deems reasonable and proper in the premises.

Dated: Akron, Ohio, December 29, 2020.

Respectfully submitted,

/s/ Robert C. Meeker

ROBERT C. MEEKER (#0013019)

Blakemore, Meeker & Bowler Co., L.P.A.
495 Portage Lakes Drive

Akron, Ohio 44319
330-253-3337 [voice]
330-253-4131 [facsimile]

Attorney for Plaintiff
ELIZABETH ELLIS, Executrix for the
Estate of John Mitchell Warrell

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JURY DEMAND ENDORSED HEREON

Now come(s), Plaintiff(s), by and through his/her/its/their attorney, Robert C. Meeker, of Blakemore, Meeker and Bowler Co., L.P.A., and hereby demand(s) a trial by jury of all issues and facts so triable in this action.

Dated: Akron, Ohio, December 29, 2020.

Respectfully submitted,

/s/ Robert C. Meeker

ROBERT C. MEEKER (#0013019)

Blakemore, Meeker & Bowler Co., L.P.A.

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Attorney for Plaintiff

ELIZABETH ELLIS, Executrix for the
Estate of John Mitchell Warrell



SANDRA KURT -Summit County Clerk of Courts

Welcome (0069631) [Logoff](#)

ELIZABETH ELLIS, EXECUTRIX vs STEAK N SHAKE, INC.

Case Type: Negligence

Case Number: CV-2020-12-3644

Full Docket Available only to Attorney of Record in the E-filing Portal. Other Parties, please see public website.

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Parties	Docket	Judge / Magistrate	Service				
Party Name	Issued Date	Writ Type	Service Date	Status	Service Type	Tracking ID	Document
STEAK N SHAKE, INC. DBA STEAK 'N SHAKE, C/O CORPORATIO, 50 WEST BROAD STREET, SUITE 1330, COLUMBUS, OH, 43215,	12/30/2020 2:53:56 PM	GeneralSummons	1/21/2021 12:00:00 AM	Served	Certified Mail	92148901577446000001090524	View Image

EXHIBIT B